

based on Smith in view of Engel and further in view of U.S. Patent No. 6,338,839 to Auguste et al. ("Auguste"). Applicant respectfully traverses these rejections.

Applicant respectfully submits that the claim rejections made under § 103 do not set forth a prima facie case of obviousness. To establish a prima facie case of obviousness, three basic criteria must be met. First, the prior art reference or references, taken alone or combined, must teach or suggest each and every element recited in the claims. See M.P.E.P. § 2143.03. Second, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to combine the references in a manner resulting in the claimed invention. See M.P.E.P. § 2143. Third, a reasonable expectation of success must exist. See M.P.E.P. § 2143.02. Moreover, each of these requirements must "be found in the prior art, and not based on applicant's disclosure." M.P.E.P. § 2143.

Regarding independent claims 1, 27, 54, and 55, neither Smith, Engel, nor any combination thereof, discloses or suggests "at least two non-adhesive layers...being permanently bonded to [an] adhesive matrix," as recited in claims 1, 54 and 55, or "[a] first non-adhesive layer and [a] second non-adhesive layer being permanently bonded together by [an] adhesive matrix," as recited in claim 27.

Smith discloses first and second substrate layers and a cleansing composition disposed between the two substrate layers. Col. 2, lines 25-35, and Col. 10, lines 21-22. As apparently recognized by the Examiner, Smith does not disclose an adhesive matrix containing at least one active agent. Office Action at 3.

The Office Action cites Engel for the asserted disclosure of an adhesive matrix containing particles. Further, the Office Action asserts that it would have been obvious to include the asserted “adhesive cleansing matrix of Engel in the cleansing article of Smith to prepare a cleansing article...that contains two non-adhesive layers and an adhesive cleansing layer disposed between the two non-adhesive layers.” (Office Action at 3-4).

Contrary to the assertions in the Office Action, Engel lacks any disclosure of an “adhesive cleansing layer disposed between...two non-adhesive layers.” In fact, Engel teaches away from the Examiner’s proposed combination because the adhesive of Engel is intended to be placed in contact with the skin of a user for at least one minute and then be “pull[ed]...away from the skin thereby removing unwanted matter such as comedones, unwanted hair follicles, dirt, oil, dead skin, and debris.” Col. 2, lines 20-35. Thus, there would have been no suggestion or motivation to place the adhesive strip of Engel between the layers of Smith, as apparently proposed in the Office Action, because it would be contrary to Engel’s stated objective of placing an adhesive in contact with skin and pulling substances from the skin.

Additionally, the Examiner used improper hindsight reasoning to combine the references without identifying any legally proper suggestion or motivation for the combination. No such motivation is provided by either Smith or Engel. Because Engel teaches away from the Examiner’s proposed combination, there is no reason why one of ordinary skill in the art would have used Engel’s skin-contacting adhesive between the non-adhesive layers of Smith, as proposed in the Office Action. Furthermore, there

would have been no suggestion to modify Smith's cleansing article to include a skin-contacting adhesive because there would not have been any reason to adhere Smith's cleansing article to skin. For example, Smith teaches a cleansing article intended to be rubbed on an area to be cleansed (col. 1, lines 18-20), so any adherence to skin would more than likely destroy the operating principles of Smith's cleansing article.

For at least the foregoing reasons, independent claims 1, 27, 54 and 55 are allowable over Smith and Engel. Claims 5-11, 14-26, 28-30, 35-43 and 45-53 are allowable at least due to their dependency from one of independent claims 1, 27, 54 or 55. Applicants therefore request that the rejection of claims 1, 5-30, and 35-55 under 35 U.S.C. § 103(a) be withdrawn and that the claims be allowed.

In view of the foregoing remarks, Applicants respectfully request reconsideration of this application and the timely allowance of the pending claims.

The Office Action contains numerous characterizations of the claims and the related art, with which Applicant does not necessarily agree. Unless expressly noted otherwise, Applicant declines to subscribe to any statement of characterization in the Office Action.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: August 18, 2004

By:



Anthony M. Gutowski
Reg. No. 38,742